

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

VINCENT LOVATO, and SARA LOVATO  
as Next of Kin to CE.L. and CN.L., Individually  
and On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ALVARADO CONCEPTS, LLC,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

No. 1:18-cv-00080-JB-KBM

**PARTIES' JOINT MOTION FOR APPROVAL OF  
SARA LOVATO AS GUARDIAN AD LITEM FOR CE.L. and CN.L.**

Vincent Lovato and Sara Lovato, as Next of Kin to CE.L. and CN.L. (Plaintiffs) and Alvarado Concepts, LLC (Defendant) respectfully request that this Court appoint Sara Lovato as Guardian Ad Litem for the interests of CE.L. and CN.L. In support of this Joint Motion, Plaintiffs state as follows:

1. In this lawsuit, Plaintiffs have asserted claims against Defendant under the Fair Labor Standards Act, 29 U.S.C. § 216(b) (FLSA).

2. In actions under the Fair Labor Standards Act, 29 U.S.C. § 216(b), such as this lawsuit, settlement agreements require judicial approval. *Lynn's Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1354 (11th Cir. 1982). Consequently, "[w]hen employees bring a private action ... under the FLSA, and present to the district court a proposed settlement, the district court may enter a stipulated judgment after scrutinizing the settlement for fairness." *Id.* at 1353.

3. The parties provided the Court with a Joint Motion to Approve Settlement on May 16, 2018 because the proposed settlement represented a fair and equitable resolution of a bona fide

dispute between the Parties, under the circumstances.

4. Minors CE.L. and CN.L. are represented in this case by their next of kin, Sara Lovato. The Court has requested the appointment of a Guardian Ad Litem (GAL) to ensure the interests of the minor children Plaintiffs pursuant to Fed. R. Civ. P. 17(c).

5. The parties request that the Court appoint Sara Lovato as GAL because she is already serving as Next Friend pursuant to Rule 17(c). Ms. Lovato is the mother of CE.L. and CN.L. and is familiar with the facts underlying the complaint, the damages sought, and the attorneys' fees incurred. As Next Friend, she has already been selected to represent the best interests of CE.L. and CN.L. in this matter. If she were to serve as GAL, she would be able to provide a recommendation to the Court that would be in the best interests of the children.

6. Moreover, appointment of outside counsel to act as GAL would effectively destroy the settlement agreement being proposed. Both parties reached out to an attorney regarding his fees as GAL. He estimated his fee would be between \$3,000 and \$4,000. Given that the damages and attorneys' fees proposed in the settlement agreement are modest, the cost of an outside GAL would significantly cut into their total recovery. In the event that a GAL did charge these costs, Plaintiffs would seek to tax those costs against Defendant.

7. Defendant, for its part, takes the position that the imposition of thousands of dollars of unanticipated costs on an already modest settlement will likely result in a breakdown in settlement on its end.

8. Therefore, because Sara Lovato is already acting as Next Friend to the minors pursuant to Fed. R. Civ. P. 17(c) and because the imposition of an outside GAL would likely destroy this settlement, the parties respectfully request that the Court appoint Sara Lovato as GAL to represent to the Court that the settlement is in the best interest of CE.L. and CN.L.

**WHEREFORE**, the Parties respectfully request that the Court: appoint Sara Lovato as GAL to ensure that the settlement is in the best interest of CE.L. and CN.L.

<p>By: <u>/s/ Joel W. Rice</u> Joel W. Rice James M. Hux, Jr. FISHER &amp; PHILLIPS LLP 10 South Wacker Drive, Suite 3450 Chicago, Illinois 60606 Telephone: (312) 346-8061 Facsimile: (312) 346-3179 Email: <a href="mailto:jrice@fisherphillips.com">jrice@fisherphillips.com</a> Email: <a href="mailto:jhux@fisherphillips.com">jhux@fisherphillips.com</a></p> <p>Stanley K. Kotovsky, Jr. TINNIN LAW FIRM, a professional corporation P, O. Box 25207 Albuquerque, New Mexico 87125 Telephone: (505) 768-1500 Email: <a href="mailto:skotovsky@tinninlawfirm.com">skotovsky@tinninlawfirm.com</a></p> <p><i>Attorneys for Defendant</i></p>	<p>By: <u>/s/ Christopher Benoit</u> Christopher Benoit New Mexico Bar No. 150497 THE LAW OFFICE OF LYNN COYLE, P.L.L.C. 2515 North Stanton El Paso, Texas 79902 Telephone: (915) 532-5544 Facsimile: (915) 532-5566 Email: <a href="mailto:chris@coylefirm.com">chris@coylefirm.com</a></p> <p><i>Attorney for Plaintiffs</i></p>
---	--

**CERTIFICATE OF SERVICE**

This is to certify that on June 13, 2018, I served a copy of the foregoing pleading upon Defendant counsel of record via the Electronic Case Filing system.

/s/ Christopher Benoit  
**CHRISTOPHER BENOIT**